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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-310

THE RAINIER AVENUE CORPORATION,
a Washington corporation,
Petitioner,

v.

THE CITY OF SEATTLE,
a municipal corporation,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF IN OPPOSITION

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JURISDICTION

Respondent submits that this quiet title action to Washington land involves no federal question within the meaning, contemplation or intent of 28 U.S.C. 1257(3), or within the scope of Rule 19(a) which applies to review of state court decisions. Petitioner has mistakenly relied upon the Court's powers to supervise *federal courts* found in Rule 19(b) applicable only to review of federal court proceedings.

QUESTIONS PRESENTED

1. Has petitioner stated a proper ground for review of a state supreme court decision under Rule 19(a)?

2. Did the Washington State Supreme Court correctly ascertain the rights and quantum of interests obtained by petitioner by a quitclaim deed of a reversionary interest in real property from the trustee of a dissolved corporation under applicable Washington State law[1] and common law principles, which are binding upon federal courts, 28 U.S.C. § 1652—State laws as rules of decision.

3. Does the denial of a Petition for Rehearing by a state supreme court, after its majority (6-2) rejected petitioner's contentions—asserted in the dissenting opinion, and after receiving a petition stating all the grounds asserted by petitioners in this Court and an answer thereto by respondent, in a case defining the rights and quantum of interest obtained by petitioner under a quitclaim deed of a reversionary interest in real property from the trustee of dissolved corporation for ten dollars, raise any federal questions, or present any special or important reasons warranting review by this Court?

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1. Petition, Appendix A, at A-5 *et seq.*; 80 W.D.2d 366 *et seq.*; 494 P.2d 999 *et seq.*

> "In construing a plat, the intention of the dedicator controls. This intention is to be derived from the plat itself, where possible, as that furnishes the best evidence thereof. [Citation omitted] . . . in construing a plat, we are not limited to consideration of the words alone. Lines and designations appearing on the plat are also to be considered. [Citations omitted] . . . .
>
> "It is also a salutary rule to resolve doubts against the dedicator, and within reasonable limits, to construe dedications so as to benefit the public rather than the dedicator. [Citations omitted]"

STATUTE INVOLVED

Petitioner expressly conceded no statute is involved (Petition, p. 2).

STATEMENT OF THE CASE

This is a quiet title action, involving the interpretation of a dedication of land for park purposes in a plat recorded in 1891, which was resolved under local state law[2] and common law principles by the Washington State Supreme Court.

On September 18, 1891 a plat was recorded in King County, State of Washington, dedicating the land in question for park purposes. In 1957 some of the street easements in this park area were vacated by the City of Seattle. On August 9, 1963 Philip P. Malone, an attorney, obtained a quitclaim deed from the trustee of a dissolved corporation (Resolution for dissolution dated May 22, 1961) for the sum of ten dollars, to "the platter's reversionary interest" "such as that interest might be" in the park land in question, which underlies the vacated street easements. With this quitclaim deed from the trustee of a dissolved corporation as his source of title, Mr. Malone on May 5, 1964 filed this quiet title action on behalf of petitioner seeking immediate possession of park land, but "the platter's reversionary interest" was not transferred to petitioner (a corporation in which Malone is a shareholder) until six months later by another quitclaim deed for the sum of ten dollars, dated January 1, 1965.

In the first appeal *Rainier Avenue Corp. v. Seattle*, Petition, Appendix B, 76 Wn.2d 800, 459 P.2d 40 (1969), the Washington State Supreme Court, at Petition, A-17,

2. See Footnote 1.

76 Wn.2d 805, 459 P.2d 44, summarized petitioner's contention as follows:

> ". . . that it is the successor to the Blacks' interest in greenacre *such as that interest might be.*" [Emphasis added.]

After a second trial, a second decision of the Washington State Supreme Court, *Rainier Ave. Corp. v. Seattle*, Petition, Appendix A, 80 Wn.Dec.2d 362 494 P.2d 996 (1972), resolved the ultimate issues adversely to petitioner's contentions. In this second decision, the Washington State Supreme Court majority opinion (6-2) stated at Petition, Appendix A, page A-3, 80 Wn.Dec.2d 365, 494 P.2d 998:

> "The issue thus presented to the trial court, and now before us, of necessity involves a determination of the quantum of title held by the dedicators following the filing of the plat."

Then this decision at Petition, Appendix A, page A-5 *et seq.*, 80 Wn.Dec.2d 366 *et seq.*, 494 P.2d 998 *et seq.*, correctly ruled that this issue necessarily, inherently and inevitably involved ascertainment of the dedicator's intent, presenting a question of law for the state court, requiring the application of long established local Washington state law and common law principles. See the decision, Petitioner's Appendix A, at page A-5 *et seq.*, and the authorities cited therein such as Dillon, *Commentaries on the Law of Municipal Corporations*, Sec. 1107 (5th ed. 1911), all of which is in complete accord with other authorities such as 11 McQuillin, *Municipal Corporations* (3rd Rev. Ed. 1964) Secs. 32.29, 33.30, and 33.41; and Dillon, *supra*, Sec. 1079 at pages 1776-7. Thereafter petitioner's Petition for Rehearing (Petition, Appendix F, pp. A-25 through A-39) was filed and denied (Petition, Appendix G).

Thus the case simply reduces itself into the issue of resolving the legal significance of the language used by a private property owner in the plat which he recorded in 1891 when he dedicated the land in question as "Columbia Park." In this case the Washington State Supreme Court held that the language of this particular dedication together with the particular plat map upon which the dedication was written, created a dual easement, one for a park and another for some streets, and that the dedication for park purposes was not superseded or voided by street easement vacation proceedings in 1957.[3] In short it is simply a case where the Washington court was called upon to construe a document in accordance with local state law and involves no federal statutes or questions.

ARGUMENT

Petitioner has failed to state a proper ground for review by this court, because it mistakenly (at Petition p. 8) relies upon a portion of Rule 19(b) which applies only to review of decisions of federal courts of appeals and provides:

> "(b) Where a court of appeals . . . has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this court's power of supervision."

The test applicable to review of state court decisions, Rule 19(a), is as follows:

> "(a) Where a state court has decided a federal question of substance not theretofore decided by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

3. Accord: *Turner v. Davisson*, 47 Wn.2d 375 at 378, 387 P.2d 728 at 733 (1955) where two roads run on the same line, or intersect, an order vacating one does not vacate the other.

The Washington Court decisions in this case do not even discuss or raise *any* federal questions, and it is submitted that no "federal question of substance" is involved herein.

This case was decided by the Washington Court upon its own unique facts, so it will affect few, if any, other litigants, and created no conflict of decisions, state or federal. Indeed it is merely a correct application of long established Washington Law[4] and common law principles to the unique set of facts presented and it has no significance or importance worthy of notice by this Court.

Petitioner's contention that the State Supreme Court decided this case "by constructing a theory based upon an issue of law and fact" not raised until the second opinion was rendered—thereby depriving petitioner of "notice and opportunity to be heard or present evidence"—is likewise without substance. The "quantum of petitioner's interest" issue was squarely raised by the State Supreme Court in its first decision, Petition Appendix B, page A-12 at A-17 when it stated that petitioner contended:

> ". . . that it is the successor to the Black's interest in greenacre *such as that interest might be.*" [Emphasis added]

Respondent submits that the dissenting Washington State Supreme Court opinion, which petitioner relies upon on pages 9 and 10 of the petition herein, is ample evidence that petitioner's contentions herein were raised, considered and rejected by the majority of the court when it rendered its opinion. Further petitioner's views on its "new issue theory" were again submitted to the state court in the Petition For Rehearing, Appendix F to the Petition herein,

4. See Footnote 1.

which the Washington Court again properly rejected when it denied a rehearing, Appendix G to the Petition. Respondent submits that petitioner simply failed to meet its burden of proof on the legal issues concerning the dedicator's intent and the quantum of title acquired by the deed from a trustee of a dissolved corporation for ten dollars, and that these issues of state law[5] were necessarily, inherently and unavoidably involved in this case.

It is well established law and an exception to the rule against considering matters not raised in the trial court, that

> "The general rule has also been denied application where the question raised first on appeal relates to the foundation of the rights of the parties, . . .
>
> "• • •
>
> "Questions *necessarily* involved in issues raised and litigated in the trial court are open for consideration on appeal or review, even though they were not specifically raised below." [5 Am.Jur.2d, *Appeal and Error*, §§548-9, pp. 33-4 (1962)] [Emphasis added]

These rules were quoted and applied by the Washington State Supreme Court in *Maynard Inv. Co., Inc. v. McCann*, 77 Wn.2d 616 at 621 *et seq.*, 465 P.2d 657, at 660 *et seq.* (1970), where that court held:

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5. Petitioner (at page 7 of the Petition) states "The intent of the dedicator is a finding of fact . . ." and at pp. 8-9 asserts the same erroneous contention, that this ruling is a question of fact; but this defeats rather than supports petitioner's request for review by this court because:

> "The Supreme Court will not exert its jurisdiction merely to review a decision of a state court upon a question of fact." Stern & Gressmen, *Supreme Court Practice* (Fourth Ed. 1969) p. 142,

and Cf. *Grayson v. Harris*, 267 U.S. 352, 358, 45 S.Ct. 317, 69 L.Ed. 652 at 656 (1924); *Portland R. Co. v. Railroad Commission*, 229 U.S. 397, 412, 33 S.Ct. 820, 57 L.Ed. 1248 at 1258-9 (1913); and *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160, 73 S.Ct. 204, 97 L.Ed. 168 at 172 (1952).

> "The exception to the rule is a salutary one. Courts are created to ascertain the facts in a controversy and to determine the rights of the parties according to justice. Courts should not be confined by the issues framed or theories advanced by the parties if the parties ignore the mandate of a statute or an established precedent. A case brought before this court should be governed by the applicable law even though the attorneys representing the parties are unable or unwilling to argue it."

See also *In re Lee's Estate*, 49 Wn.2d 254, at 257, 299 P.2d 1066 at 1068 (1956), where the Washington Court held:

> "No argument was made on this point in the trial court; however, since we are asked to construe the will [Cf. dedication in a plat], which involves only a question of law, we will dispose of the theory presented."

Thus the Washington State Supreme Court had ample jurisdiction, authority and precedent for the majority opinion in this case, notwithstanding petitioner's contentions to the contrary.

It is unclear to respondent whether petitioner is seeking a new forum in which to present some argument which it might have made on the "two easements" theory, or is seeking a reversal by this Court because "The [Washington State Supreme] court has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this court's power of supervision." In either event 28 U.S.C. § 1652 makes state, not federal, law the applicable "rules of decision" and renders this case completely inappropriate for review by this Court by Certiorari. The matter has been properly resolved in the proper form, by the State Supreme Court in accordance with its

own well established rules without any mention of any federal questions, so neither interpretation of the petition herein states an appropriate ground for review by this Court.

Further, title to real property is a local, not a federal question, involving local not federal law, and is not a proper subject for review by this Court by certiorari, Cf. *Donohue v. Vosper*, 243 U.S. 59 at 66, 37 S.Ct. 350, 61 L.Ed. 592 (1917); *Gannon v. Johnston*, 243 U.S. 108 at 113-4, 37 S.Ct. 330, 61 L.Ed. 622 (1917); *Sylvester v. Washington*, 215 U.S. 80 at 86, 30 S.Ct. 25, 54 L.Ed. 101 (1909); *Cramer v. Wilson*, 195 U.S. 408 at 416, 25 S.Ct. 94, 49 L.Ed. 256 (1904);[6] *Kennedy v. Hunt*, 48 U.S. 586 at 593-4, 12 L.Ed. 829 (1849); and 28 U.S.C. § 1652—State laws as rules of decision.

CONCLUSION

The petition herein is not based upon grounds applicable to review of state court decisions, does not involve either a federal question or a federal question of substance, and seeks review of a state court decision pertaining to only a local issue—resolution of the significance of a dedication of land for park purposes in an 1891 plat—which turned upon its own unique facts, and correctly applied applicable Washington law and common law principles. Neither the findings of fact nor the application of local Washington State law to those facts by the Washington State Supreme Court are subject to or are appropriate for review by this

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6. At 195 U.S. 416 this Court stated:

> "We have repeatedly held that when the question in a state court is . . . whether he [a bankrupt] has title at all, and the state court decided that he had not, no Federal question is presented. [citations omitted]"

Court by Certiorari. Further, this Washington State Supreme Court decision creates no conflict of decisions—federal or state, and has little or no significance or effect upon other litigants. Accordingly the petition for Writ of Certiorari in this case should be denied.

Respectfully submitted,

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